

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:15cr44
	.	
vs.	.	Alexandria, Virginia
	.	July 31, 2015
AMAR ENDRIS,	.	9:06 a.m.
	.	
Defendant.	.	
	.	
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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	JOHN T. GIBBS, SAUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314
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FOR THE DEFENDANT:	KEVIN R. BREHM, ESQ. NICHOLAS J. XENAKIS, ESQ. Office of the Federal Public Defender 1650 King Street, Suite 500 Alexandria, VA 22314
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<u>ALSO PRESENT:</u>	SA JONATHAN SIKORSKI
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OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Criminal Case 15-44, United States of
3 America v. Amar Endris. Would counsel please note their
4 appearances for the record.

5 MR. GIBBS: Good morning, Your Honor. John Gibbs on
6 behalf of the United States. John Sikorski with the FBI is
7 also present.

8 THE COURT: Good morning.

9 SA SIKORSKI: Good morning.

10 MR. BREHM: Good morning, Your Honor. Kevin Brehm
11 along with Nick Xenakis on behalf of Mr. Endris, who's in
12 custody and should be entering the courtroom any moment.

13 THE COURT: All right.

14 (Defendant present.)

15 MR. BREHM: Mr. Endris is now present, Your Honor.

16 THE COURT: All right. Mr. Brehm, have you had
17 enough time to go over the pre-sentence report yourself and
18 with Mr. Endris?

19 MR. BREHM: I have, Your Honor, but there is pending
20 a motion for new trial. I don't know if you wanted to address
21 that first. If so, Mr. Xenakis would be the person to handle
22 that.

23 THE COURT: I've read the pleadings on this case.
24 I'm going to deny the motion. There was sufficient evidence
25 presented during the trial to establish your client's guilt

1 beyond a reasonable doubt. There is not any compelling
2 evidence of entrapment, and any objection to the trial has been
3 overruled.

4 I don't see any new issue that was raised. There's
5 no change in the law that I am aware of or that was brought to
6 my attention, and so I don't think there's anything there, so
7 the motions are denied.

8 MR. BREHM: Thank you. I just want to make sure that
9 that matter was clearly resolved first.

10 THE COURT: I have, yeah.

11 MR. BREHM: I appreciate that.

12 So getting back to your question, and I apologize,
13 Your Honor, yes, I have reviewed the pre-sentence report with
14 Mr. Endris. A copy has been provided to him. Your Honor
15 probably noted that the pre-sentence report reflects the one
16 objection I had made to calculation of the guidelines, and I
17 think the probation officer did an excellent job summarizing.

18 THE COURT: Your client would qualify as a prohibited
19 person even if the, that was not charged as an actual crime.
20 There's adequate -- more than adequate evidence of his use of
21 drugs, and that would make him a prohibited person to have a
22 firearm.

23 MR. BREHM: I believe that the evidence did show that
24 he would come under that classification. Our position was that
25 for purposes of the guidelines, we believe that the -- when you

1 look at a base offense level as opposed to specific offense
2 characteristics, the base offense level is supposed to reflect
3 the crime of conviction, and he was not convicted of being a
4 drug abuser in possession of a firearm. Instead, it was the
5 other type of illegal question, that is, the firearm in
6 question itself was illegal, that anyone who possessed it,
7 whether a drug abuser or prior felon or not, could not possess
8 that type of gun.

9 THE COURT: Yeah, but it's an aggravating factor that
10 is properly considered in looking at the total offense conduct.
11 It's relevant conduct in my view, and so I think that the
12 Probation Office calculated that correctly.

13 MR. BREHM: Thank you, Your Honor.

14 THE COURT: All right. So there are no other factual
15 corrections, changes, additions, or deletions you want made to
16 the report itself?

17 MR. BREHM: That's correct, Your Honor.

18 THE COURT: All right. As you know then, the
19 Probation Office calculated the offense here as a level 18.
20 The defendant has a criminal history of I. That establishes an
21 advisory range of 27 to 33 months. There's a one- to
22 three-year period of supervised release. The fine range is
23 \$6,000 to \$60,000, and there's a \$100 special assessment.

24 So those figures are not being disputed at this
25 point, having overruled the objection to the offense level,

1 correct?

2 MR. BREHM: That is correct, yes, Your Honor.

3 THE COURT: All right. We all know that there have
4 been some aggravating factors that have occurred since the
5 defendant was convicted. The government has provided the
6 Court, and I assume, Mr. Brehm, you've seen copies of this,
7 too, with pictures of -- that were taken off of, as I
8 understand it, his cell phone and text messages. The pictures
9 are extremely concerning. They show the defendant -- two of
10 them show the defendant holding a firearm, pointing it at the
11 camera. It looks like it's probably a selfie.

12 In fact, in the second picture, there may be two guns
13 in his hand, it appears that way, and then in the remaining
14 first -- and I'll have this made a part of the record -- I
15 think there are three identical pictures of two firearms. One
16 appears to be all black, and one appears to be silver, unless
17 the lighting is shining on it in a strange fashion, and these
18 images include some comments.

19 It does appear as though the defendant may have been
20 attempting to actually buy and sell firearms. That's an
21 extremely aggravating post-conviction factor.

22 You, Mr. Brehm, raised in your memo that was filed
23 yesterday your concerns about the manner in which the defendant
24 was arrested. I have spoken with the arresting deputy marshal,
25 and he has advised the Court that what happened was your client

1 did not raise both hands when he was exiting his vehicle, as he
2 was instructed by the deputy. The deputy was wearing a clear
3 indication he was law enforcement, and that because the deputy
4 knew that when your client was first arrested in this case, he
5 had a knife in his right pocket and his right hand did not come
6 up, that the officer, appropriately concerned about his safety,
7 used the force that was used to push your client down to the
8 ground, I would think you call it a take-down, and that's how
9 your client's eye was injured. That's what the Court has been
10 told.

11 In any case, it's unfortunate your client got hurt.
12 It was not a very serious injury.

13 But of much more concern to the Court is these
14 photographs and these text messages, which I think you're going
15 to need to, if you can, explain to the Court.

16 MR. BREHM: Well, I'm not sure I can explain them in
17 a factual sense, although I can say with my limited knowledge,
18 I don't believe those photographs were taken at his residence
19 or are items, as far as the firearms, are items that he himself
20 owned or possessed other than at the time the pictures were
21 taken.

22 And I believe, as you mentioned and it's my
23 understanding in looking at the photographs, there appear to be
24 two firearms. There's multiple photographs, but I think it's
25 the same two firearms that are depicted each time, and I think

1 the photographs appear to be taken the same day as well.

2 THE COURT: But here's my problem: Your client was
3 convicted in April, right, in April?

4 MR. BREHM: Yes.

5 THE COURT: The date that these apparently were done
6 is June 27. That means while he's on bond, having been
7 convicted of an offense involving firearms, he's still messing
8 around with firearms. That's a real serious concern for the
9 Court.

10 MR. BREHM: As it should be. And what I can address
11 is I believe that's the, the reflection of the different
12 problems he has that have been identified in various pleadings
13 and evaluations. Not only has he just recently turned 20 and
14 so to some extent has youthful indiscretions, but to compound
15 that, despite the age, he has some very serious mental health
16 issues that I believe are reflected in this kind of conduct.

17 We don't see, to my knowledge, while on bond or
18 previously him actually using firearms in any way to threaten
19 or harm anyone. Instead, it seems very unfortunate, and I
20 think the Court has a right to be concerned, he's acting in a
21 way that immature, I would say usually teenagers, but he's just
22 turned 20, but he's, I think, in many ways, in his mental
23 capacity far younger than even 20, do these things.

24 They take selfies or other people take pictures of
25 them with things that they're, like, some kind of showing off,

1 and they put them on YouTube or they put them on Facebook, and
2 they're either depicted with a pile of cash or wearing giant
3 necklaces or holding a gun, things like that, and that doesn't
4 necessarily depict what their conduct is going to be.

5 It depicts in my mind a very immature mental state
6 that doesn't realize that that depiction alone, although it
7 might impress, you know, their peers and make them look cool or
8 whatever, is the kind of thing that's going to exactly get the
9 result that you have and most people have is that, gee, I'm
10 kind of worried. What's going on here?

11 THE COURT: Well, that might be the case if he had
12 not been prosecuted already, but he's been prosecuted now.
13 He's been convicted. He's awaiting sentencing. And to
14 continue to engage in that kind of conduct is so indicative at
15 this point of a problem with rehabilitation and so problematic
16 in terms of a deterrence that it's going to definitely affect
17 the sentence in this case.

18 MR. BREHM: Well, and I understand, and I think the
19 point I'm trying to make is that that conduct after being
20 convicted clearly is inappropriate but also reflects his mental
21 state that I'm not sure how fully he comprehended the fact that
22 having a verdict returned against him and not having been
23 sentenced yet meant he wasn't supposed to even hold guns up at
24 some friend's home or wherever and have pictures taken, which
25 may be the extent of what happened here.

1 Clearly, you and I recognize that that's totally
2 inappropriate and actually illegal under the law. Whether he
3 comprehended that or not I'm not certain based on what we know
4 about his mental state and my dealings with him.

5 Obviously, at some point in time, it seems we're
6 asking sooner than later, he needs to get mental health
7 treatment. For whatever reason, that hasn't really happened
8 while he's been on bond, although we thought it might. We're
9 making efforts to try to find appropriate treatment. There is
10 some insurance coverage that might help with that.

11 He seems like the kind of individual that I think
12 based on what I've seen in other clients, ultimately is going
13 to benefit from being in some kind of a group home situation so
14 he can get mental health and drug abuse problems taken care of
15 and then be able to transition into the community.

16 You've seen from the history and the parents'
17 letters, which I thought were very compelling, he's been trying
18 to find work. He applies for jobs, he gets jobs, and then he
19 can't hold them, and he can't hold them, I think, because of
20 some of these intellectual or mental health problems he's
21 having, but he's actually trying in some respects to be
22 productive, but at the same time, he's an extremely immature
23 person not only just in chronological age but in his mental
24 status, and he's doing what I would tell my kids is a
25 knucklehead thing -- to actually take selfies of you either,

1 either, you know, drinking from a bottle of liquor or flashing
2 jewelry, whatever.

3 These, these are things that immature, often teenage
4 people do that don't necessarily reflect what their conduct is
5 going to be, but they're still wrong, and they still give the
6 impression that you get and most of the people in the community
7 get, which is what's going on with this person? Well, we
8 already know to some extent what's going on, and that is that
9 he has certain problems that need to be address and apparently
10 haven't yet and need to be at some point.

11 So certainly at some point, he's going to be on
12 supervision. We're asking sooner than later. Well, when he
13 is, he's going to need treatment.

14 The parents are here as well as the aunt and uncle,
15 who've been supportive, and they've expressed concerns that
16 you're aware of about what's going on with him. They're not
17 sure, either, and it's frustrating to them. They want him to
18 get some kind of treatment. They've told me again today, as
19 they've told me in the past, that they're willing to have him
20 in the home if he's getting treatment and he's going to
21 treatment, because they want to find out what's going on.

22 I thought it was very powerful that they themselves
23 expressed the kind of personal guilt they did in the letters
24 that a lot of his problems, they think, are their fault in
25 terms of how he was brought up and all, and I commend them for,

1 you know, being willing to say that, but obviously, some of
2 those things are beyond their control. If he has certain
3 actual mental health issues, it's not that they created those,
4 but if they exist, they need to be addressed.

5 So our biggest concern is, is that we see these
6 things that he's doing that he shouldn't be doing, but I don't
7 see then going beyond that, where he's actually out there, you
8 know, committing crimes, where he's actually robbing people,
9 things like that. He says a lot of things that immature people
10 do to show off, and he says a lot of different things about why
11 I want a gun, whatever. There's no consistency to it that he's
12 really going to carry something out.

13 But still what he does should give concern to the
14 Court and others what's going on with him, and that's what
15 needs to be determined. What -- we know already from
16 evaluations what some of the problems are. They need to be
17 addressed.

18 Our concern is that a lengthy period of incarceration
19 we don't know is really going to address that. We still think
20 he still needs to maintain ties with his family and the
21 community to help that kind of process along, and that's what
22 we're asking the Court to consider.

23 THE COURT: All right. Mr. Gibbs?

24 MR. GIBBS: Thank you, Judge. You know, to start
25 with, Judge, I think the government shares the Court's concerns

1 about some of these latest incidents. Obviously, receiving
2 these photos in the last few days where the defendant, having
3 been on release post-conviction, apparently showed these
4 parents -- or his parents saw these pictures, became so upset
5 and so scared that they contacted Probation and said they no
6 longer wanted to be responsible for him, that's a huge concern,
7 and ultimately, the unanswered question for us is when the
8 defendant left his house, he was gone for a period of about two
9 days. We don't know much of anything about his whereabouts.

10 As the Court indicated, these photographs appear to
11 show and the FBI believes they do show actual guns. These are
12 not toy guns. And he's holding two of them.

13 We don't know where these pictures were taken. We
14 don't know where these guns are. We don't know how he got
15 these guns.

16 And again, this takes us back to the original
17 problem, which is this individual seems to have this incredible
18 fascination with guns that is so powerful, having been
19 convicted, having been on bond, where he was, you know,
20 instructed that he cannot have any guns, cannot possess guns,
21 he apparently went out, got his hands on two, and then engaged
22 in these text messages where, as the Court indicated, he talked
23 about trying to get guns.

24 So in terms of the sentence, that has to factor into
25 it, and, you know, the Court has indicated that, that the

1 enhancement that's in the pre-sentence report is appropriate,
2 so he would be facing a 27- to 33-month sentence. In terms of
3 the 3553(a) factors, a sentence within that range for
4 deterrence and punishment, we feel, would be appropriate if
5 none of this conduct has happened, but now the problem is
6 there's the 3553(a) factor about protection of the public.

7 And regardless of the defendant's mental state,
8 regardless of, you know, what that state is, the fact is he is
9 very erratic, and he just has this fascination with guns, and a
10 sentence at the top of the guideline, we believe, is
11 appropriate, and we would ask for that sentence in large part
12 to protect the public.

13 Now, in terms of that sentence, we certainly have no
14 objection if there is any kind of mental health treatment that
15 can be imposed or that he can be in a facility where that's
16 available to him. That obviously, in our view, would be a good
17 idea.

18 His parents had asked about a facility near here so
19 they can visit him. Obviously, we understand that that can
20 only be a recommendation, BOP can't be ordered to do that, but
21 we wouldn't object to that, either.

22 But in terms of a sentence, Your Honor, we would ask
23 for a sentence at the top of the guideline for all the reasons
24 that I've outlined and for the reasons that the Court has
25 alluded to. So thank you.

1 THE COURT: All right, thank you.

2 Mr. Brehm, do you -- and I'm not going to ask you to
3 reveal any attorney-client privileged conversations, but did
4 you speak with your client before coming to court today so that
5 he can explain to the Court what these photographs depict? In
6 other words, did you talk to him about, you know, where do
7 these come from? Were they Photoshopped, or are they real?

8 Do you want to give the Court anything additional
9 that can help us understand what happened here?

10 MR. BREHM: I didn't talk about those details.
11 Instead, Your Honor, once I became aware of it, it was just in
12 the last few days --

13 THE COURT: I know.

14 MR. BREHM: -- and was able to meet with him just a
15 few days ago at the detention center, I wanted to make sure
16 that he understood now and he should have understood before
17 that that kind of conduct is just not permissible.

18 In many ways, in his situation at least, it first of
19 all is illegal, and secondly, it's just not permissible
20 generally because of the concerns that have been expressed here
21 when you see people with those kind of photographs depicting
22 them holding certain items.

23 THE COURT: Right.

24 MR. BREHM: So that was the concern I had was
25 addressing his awareness of how inappropriate that that conduct

1 was. Again, because of already having dealt with him and
2 seeing the evaluations, I realize that maybe there was
3 something where he just simply didn't get it, so to speak, that
4 that type of conduct is generally improper and, more
5 specifically for him, illegal, and so that was the focus of my
6 comments, just having recently seen the photographs, addressed
7 them that way.

8 THE COURT: All right. Mr. Endris, come up to the
9 lectern. Mr. Endris, this is your chance to say anything you
10 would like the Court to consider before sentence is imposed.

11 THE DEFENDANT: I would like to apologize to
12 everybody in this courtroom, and I would like to thank
13 everybody that took their time in my trial. Thank you.

14 THE COURT: Mr. Endris, do you want to explain to the
15 Court where those photographs come from? You've seen them.
16 You don't have to if you don't want to.

17 MR. BREHM: You don't have to. You still have to
18 stand there.

19 THE COURT: Do you want to explain, or do you not
20 want to explain?

21 THE DEFENDANT: No.

22 THE COURT: You do not, all right.

23 Well, it's difficult to sentence a defendant like
24 this with -- without being aware of what's going on in the
25 world today. Right now in Arizona, there's that horrible

1 capital trial going on about the movie theater shooting, with
2 some facts that are not that different from this case. A
3 person with mental illness got ahold of weapons and committed a
4 horrible offense and is facing the dealt penalty.

5 And I heard some of the broadcast of the sentencing
6 hearing, apparently they can broadcast those state proceedings,
7 and hearing the parents talk about how tragic it was that the
8 mental health facilities or people had not been able to grasp
9 the seriousness of their son's mental illness and, so they
10 could do something that might have prevented the tragedy.

11 I make these comments because I think Mr. Endris's
12 parents should be commended for having the courage to bring to
13 the Probation Office's attention their concerns. You may have
14 saved your son's life because if he were to stay out on the
15 street untreated, the potential for some horrendous event in
16 the future might be out there. This combination of severe
17 mental illness and weapons is deadly. We've seen it time and
18 time again in our society.

19 So the government is correct that that 3553(a)
20 factor, that is, concern about the safety of the community, has
21 to be a major component of this Court's sentencing decision.
22 And this is a difficult decision because I do recognize that
23 Mr. Endris is very young and does definitely have some mental
24 health issues that are definitely affecting his behavior, but I
25 can't let that excuse what's happened, and I do feel that a

1 period of incarceration that's going to keep him off the
2 streets and keep the community safe hopefully give Mr. Endris
3 some time to mature and think about what he wants to do for the
4 rest of his life, hopefully get some mental health treatment,
5 and then keep him on a very strict regime of supervised release
6 when he's released, may sufficiently address these problems
7 that we can avoid a tragedy down the road.

8 I can't lock him up for life, and I'm not going to do
9 that, but I think in this case, a sentence within the
10 guidelines is appropriate. I'm not going to go quite as high
11 as the government is requesting, but I am going to sentence the
12 defendant in the middle of the range, to 30 months in the
13 custody of the Bureau of Prisons, with credit for the time he
14 has already served on this case.

15 I'm going to recommend that the Bureau of Prisons
16 designate him to the mental health facility at Butner, which
17 would keep him as close to this area as possible, but I will --
18 and I'm going to ask the Probation Office when they contact the
19 Bureau of Prisons to really do all you can to get this man
20 placed in a mental health facility so that he can get the
21 treatment that he does need.

22 At the completion -- after the completion of the
23 30-month prison sentence, Mr. Endris, you're going to serve
24 three years of supervised release. The terms and conditions of
25 your supervision are first of all your uniform good behavior,

1 which means you cannot violate any federal, state, or local
2 laws while under supervision.

3 Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Secondly, you have to follow all the
6 conditions of supervision, which will be explained to you by
7 the Probation Office and will be also on your judgment order.
8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, first of all, you must be drug free.
11 You will have to submit to drug testing and participate in such
12 in- or outpatient drug treatment as directed by the Probation
13 Office.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: The costs of the testing and treatment
17 will be waived, so that's not going to be a problem, and the
18 Court is going to require you to give up any privacy rights you
19 have to the program so the Probation Office can monitor your
20 progress.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Secondly, you must satisfactorily
24 participate in such mental health evaluation and treatment as
25 directed by the Probation Office. That will include

1 counseling, it may include the taking of medications, it may
2 include being in an inpatient facility, but you must fully
3 comply with any directions concerning mental health treatment.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: The costs of such evaluations and
7 treatment will be waived, and you will have to give up any
8 privacy rights that you have to the mental health treatment so
9 that the Probation Office can monitor your progress.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: There's also going to be a very strict
13 restriction on your use of computers and the Internet. You
14 will have to first of all submit to the Probation Office's
15 computer monitoring program, which means they can put devices
16 on any of your electronic equipment to make sure that you're
17 not going to any sites that you shouldn't be going to. At any
18 time, any cell phone, any computer, any device that you use for
19 communication can be reviewed by the Probation Office, in other
20 words, you have no privacy rights, so they can make sure that
21 you're not getting involved again in, in photographs of guns,
22 in chat rooms concerning guns.

23 You're to have absolutely no communication about guns
24 or any type of weapon or any kind of soldiers of fortune, any
25 kind of publication doing with -- having to do with violence.

1 Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: So if they find out that you've been
4 doing any of that -- and that also means if you go to an
5 Internet cafe and they find out that, oh, you just downloaded
6 some pictures of guns or you just had a chat with somebody
7 about weapons, you're in violation, and if you violate the
8 conditions of supervision, we can send you back to prison for
9 three more years.

10 Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: All right. Now, I'm also concerned when
13 you are, when you are released as to where you are going to be
14 able to stay. It will be an additional condition of
15 supervision that the residence will have to be approved by
16 Probation. We want to make sure that if your plan is to go
17 live with your parents, that your parents are comfortable with
18 the situation and that the Probation Office is comfortable with
19 the situation.

20 So you can't just go back and live where you want to
21 live. It's going to be supervised. Do you understand that?

22 THE DEFENDANT: Yeah.

23 THE COURT: I'm also going to require that you be on
24 GPS monitoring as a condition of supervision so we know where
25 you are. I don't want you, you know, hanging around places

1 that might be a problem.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: The costs for the GPS monitoring will
5 also be waived in this case.

6 And lastly, you cannot possess any type of weapon,
7 that includes knives, nunchucks, any kind of weapon at all. Do
8 you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: The Court finds that given your financial
11 situation, you cannot afford the costs of incarceration, any
12 costs of supervision or the statutory fines, but the \$100
13 special assessment is mandatory, and that must be paid
14 promptly.

15 I also want to advise you that since you pled not
16 guilty and you were found guilty at trial, you have a right to
17 appeal both your conviction and the sentence the Court has just
18 imposed. If you do want to file an appeal, your notice of
19 appeal must be filed within 14 days of today's date.

20 You have the right to be represented by counsel
21 throughout your appeal. If you do choose to appeal, I will at
22 this point reappoint the Public Defender's Office to represent
23 you on appeal.

24 And I think that concludes everything. Is there
25 anything further the government wants the Court to add in the

1 sentence?

2 MR. GIBBS: No, Judge, I believe you covered
3 everything that we would ask for. Thank you.

4 THE COURT: Was there a forfeiture in this case?

5 MR. GIBBS: Judge, there was -- I think there was a
6 knife.

7 THE COURT: I mean, do I need to do a forfeiture
8 order? I don't think one was presented to us.

9 MR. GIBBS: No, we didn't present one, Judge. I can
10 submit one.

11 THE COURT: Mr. Brehm, is there any issue about that?

12 MR. BREHM: Well, I'm not sure if this is a knife
13 from the original arrest. The government just needs to
14 communicate with me and identify what they're talking about. I
15 can determine whether or not -- there's some personal property
16 that I think the government might have that otherwise, if it's
17 not evidentiary or contraband, we'd certainly want that
18 returned.

19 THE COURT: Well, that could be returned to the
20 parents. Obviously, the defendant can't take it.

21 MR. GIBBS: I tried talking to Mr. Brehm. I doubt
22 that a forfeiture order will be required, but we'll discuss
23 that later.

24 THE COURT: All right.

25 MR. BREHM: I mean, again, based on the length of

1 incarceration, if there's a knife, and I believe it might be
2 what we call a pocket knife, that could be returned to the
3 parents. I don't see why that has to be forfeited, and I would
4 at least on the record oppose forfeiture of that. It's not in
5 my mind related to the case or properly forfeitable property.

6 THE COURT: Mr. Gibbs?

7 MR. GIBBS: We can give it to the parents, Judge.
8 That's not a problem.

9 THE COURT: All right, that's fine. Then you've
10 worked that out.

11 And obviously, because of the problem on bond, I'm
12 not going to release the defendant pending appeal.

13 MR. BREHM: I understand that, Your Honor. I would
14 just make --

15 THE COURT: Were you making that motion for the
16 record?

17 MR. BREHM: I'll make the motion for the record --

18 THE COURT: All right.

19 MR. BREHM: -- and ask that he be a voluntary
20 surrender, he be released on bond pending appeal.

21 I understand your ruling, though.

22 THE COURT: All right.

23 MR. BREHM: There was one matter I wanted to mention.
24 You gave a number of special supervision conditions beyond the
25 normal conditions. There's one in particular I think I need to

1 note an objection on the record. That's the GPS monitoring.
2 Based on the length of the incarceration and the anticipation
3 that he'll benefit from some type of treatment during that
4 lengthy period as well as having numerous other stringent
5 conditions you've identified, I don't think GPS monitoring is
6 appropriate or warranted unless while he's on supervision,
7 there's actually a need for it.

8 I think if Probation feels once he's on supervision
9 that there's a need, they could raise that. The parties could
10 address that with the Court at that time. So at this point, I
11 would object to that condition.

12 THE COURT: I'm going to overrule the objection. I
13 want to start tough, and if things are looking good, then we
14 can release that condition early on.

15 But again, because part of the issue here was he left
16 the parents' home and for two days, nobody really knows where
17 he was, and so I don't know if he went to a gun store and was
18 looking at guns. I don't know, you know, if he was casing a
19 joint, because, you know, he used to talk about robbing things.
20 I just think at this point, we need to have a sense once he
21 gets into the community as to what he's doing, and so I'm
22 overruling the objection. I'm not aware of any legal
23 impediment to having that as a condition.

24 MR. BREHM: Your Honor, I apologize. One of the
25 special conditions had to do with certain things he could look

1 at, and I'm not sure if you, if you included in that a
2 condition that he not look at things that are violent or some
3 broad term like that. I would object to the breadth and
4 vagueness of that kind of term. I understand you mentioned
5 some things that, let's say, things that depicted firearms as
6 an example.

7 THE COURT: Right.

8 MR. BREHM: But any restriction that's used as a
9 broader term like, you know, "violence," we would object to
10 that because I just think that's too vague and ambiguous and
11 too likely that he might -- it's too gray an area I would
12 suggest.

13 THE COURT: Well, I'm leaving it there, and if
14 there's a problem, in other words, if the Probation Office
15 thinks there's been a violation, we'll address it at that
16 point, but I want it made clear that the defendant needs to be
17 extremely conservative as to what sites he decides to go visit
18 when he's on the Internet.

19 All right, anything further?

20 MR. BREHM: I don't believe so. And I do appreciate
21 the recommendation to Butner, because that's what we were going
22 to ask for based on the length of sentence, and that is the
23 closest medical facility --

24 THE COURT: All right.

25 MR. BREHM: -- that we know of to the area.

1 THE COURT: All right. The defendant is remanded.
2 Mr. Gibbs?

3 MR. GIBBS: Thank you, Your Honor.

4 (Which were all the proceedings
5 had at this time.)

6

7 CERTIFICATE OF THE REPORTER

8 I certify that the foregoing is a correct transcript of
9 the record of proceedings in the above-entitled matter.

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/s/
Anneliese J. Thomson